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PART-I

Notifications, Orders and Declarations by Haryana Government

STATE ELECTION COMMISSION, HARYANA
NIRVACHAN SADAN, PLOT NO. 2, SECTOR-17, PANCHKULA-134109

Order

The 31st May, 2024

No. SEC/3ME/2024/680.— Whereas, Smt. Nisha Kano Vangha has filed this review petition of the order dated 12.04.2024 passed by the State Election Commission, Haryana in the present case. The review petition has been filed by the applicant mainly on following grounds:-

- i. That she is no more a citizen of Kenya as she had already renounced her citizenship on 28.07.2014 submitting an affidavit to the Republic of Kenya. In the said affidavit it was specially mentioned on 28.07.2014 itself the applicant had renounced the citizenship of Kenya (refer to para 5 of Review application).
- ii. That as a matter of fact the provisions of Section 13-I of the Haryana Municipal Act can at most be exercised suo-moto and not upon the complaint of any individual. Therefore, ultimately since the complaint itself is not maintainable, the complete exercise is liable to be set aside. Further it has been contended that if somebody wants to make a complaint against the winning candidate to the post of President of a municipal Committee/Council, then he has the liberty to file the same, as per the statute in the form of Election Petition to the concerned authorities. Therefore, it was specially submitted that the proceedings which have been initiated are completely illegal (refer to para 6 of Review application).
- iii. That once her grandfather was a citizen of undivided India, therefore, the issue of citizenship cannot be taken up against her. The applicant has already become the citizen of the country, even then so as to rule out all technical flaws, an application dated 30.06.2023 has already been submitted by the applicant for the purpose of affirming the fact that she is an Indian citizen (refer to paras 7 & 13 of Review application).
- iv. That the conclusion given by authority in para 19 that the applicant is a citizen of Kenya and till the time she has renounce her citizenship and she does not get citizenship of India and she is not eligible to contest the election. In the impugned order, the authority has said that, they tried to enquire from The Republic of Kenya regarding the factum that whether the applicant has renounced her citizenship on 28.07.2014 or not? No finding has been given in this regard because no reply has come from Kenya. Therefore, the same has been presumed against the applicant. To the contrary, in these peculiar circumstance instead of waiting for the reply from the Government of Kenya regarding the factum that the applicant had renounced her citizenship on 28.07.2014, the authorities in a hurriedly manner have passed the impugned order dated 12.04.2024. Therefore, considering all these peculiar facts and circumstances the order dated 12.04.2024 is liable to be reviewed (refer to para 15 of Review application).

- v. It is submitted that it is an admitted fact that the applicant is having the voting rights since 2015 and even at the time of submission of the nomination papers for the post of President, all the requisites documents were checked by the authorities and accordingly she was allowed to contest the election. Therefore, at this stage in an illegal manner, passing the order dated 12.04.2024 by disqualifying the applicant from the post of President of Municipal Committee, Ismailabad district Kurukshetra as completely illegal. Therefore on that instance also be impugned order is liable to be reviewed (refer to para 16 of Review application).
- vi. It is submitted that, there is a prescribed procedure for challenging the election of the winning candidate as per the provisions Section 275 (B) of 1973 Act read with Rule 75 to 80 of Haryana Municipal Election Rules, 1978, whereby as per the same the election can only be challenged by way of filing the election petition (refer to para 18 of Review application).
- vii. It is submitted that the authorities have passed the order by claiming the fact that the applicant had concealed some facts at the time of submitting her nomination papers. To the contrary, there had been no concealment on the part of the applicant, rather the authorities while passing the impugned order, in an illegal manner, removed the applicant from the post of President, Municipal Committee, Ismailabad. It is submitted that the powers under Article 243-K & 243-ZA of the Constitution of India and Section 13-A & Section 13-I of Municipal Act, 1973 are required to be used sparingly, in the special circumstances and not as a matter of routine. The authority concerned has passed the order in a routine manner without considering the consequences of the same. Therefore, the legislature in its wisdom has provided Section 13-K in the 1973 Act, providing the power to review the earlier order. Therefore, considering the fact that the order dated 12.04.2024 has been passed without considering the peculiar facts and circumstances involved in the present case, is liable to be reviewed as per the provisions of Section 13-K of 1973 Act (refer to paras 19 & 20 of Review application).

2. I have gone through the review application carefully. The moot question in the case is whether Smt. Nisha Kano Vangha was a citizen of India at the time of filing her nomination for election to the post of President of Municipal Committee, Ismailabad, district Kurukshetra in June, 2022 or not?

3. The applicant has emphasised in her review application that the State Election Commission has tried to enquire from The Republic of Kenya through its High Commission in New Delhi regarding factum, whether applicant had renounced her citizenship on 28.07.2014 or not? Since no reply has come from the Govt. of Republic Kenya therefore, the same has been presumed against the applicant instead of waiting for reply from the Government of Kenya regarding factum of applicant that she had renounced her citizenship on 28.07.2014 and authorities have hurriedly passed impugned order dated 12.04.2024. This aspect of the case has been duly considered in para 19 of my previous order dated 12.04.2024 and the applicant has only twisted this fact in her present review application.

4. Whereas, at the time of passing the order dated 12.04.2024, it has come on the record that while submitting application under Section 5 (i) (g) of the Citizenship Act, 1955 on 30.06.2023 by applicant for obtaining Indian citizen to the Government of India, the applicant has duly mentioned that she is a citizen of Kenya and has also mentioned her passport No. AI566161 of Kenya and also enclosed copy of her Kenyan passport with the said application. When the fact has been admitted by the applicant that she was a citizen of Kenya in an application submitted on 30.06.2023, there was no occasion for waiting reply from The Government of Kenya in this regard.

5. Whereas, all the grounds as mentioned by the applicant in her present review application have already been considered and discussed in detail in my order dated 12.04.2024. No new facts or evidence or any patent error has been brought on record by the applicant in her present review application. The applicant has only twisted all the facts and circumstances already considered by me in the order under review.

6. Therefore, from the facts and circumstances as emerged from the record it is clearly established that Smt. Nisha Kano Vangha was not a citizen of India at the time of her election to the post of President, Municipal Committee, Ismailabad, district Kurukshetra because she was a citizen of Kenya having Overseas Citizen of India Card. Accordingly, keeping in view the facts and circumstances and legal provisions as already discussed in the previous order dated 12.04.2024, she was not qualified to contest the election for the post of President of Municipal Committee, Ismailabad and has thus incurred disqualification under 13 A (1) (a) of the Haryana Municipal Act, 1973.

Accordingly, the present review application is without any merit and the same is dismissed as such.

Panchkula:
The 31st May, 2024.

DHANPAT SINGH,
State Election Commissioner, Haryana.